

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 936.) The Governor's Office authorized the notice to proceed through the rulemaking process on October 9, 2012.

[R14-52]

PREAMBLE

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|---|---------------------------------|
| <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| R17-5-202 | Amend |
| R17-5-203 | Amend |
| R17-5-204 | Amend |
| R17-5-205 | New Section |
| R17-5-208 | Amend |
| R17-5-209 | Amend |
| R17-5-211 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statutes: A.R.S. §§ 28-366, 28-962, 28-2169, and 28-5204
Implementing statutes: A.R.S. §§ 28-3223, 28-5201, 28-5235, 28-5237, and 28-5238
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rules:**
Notice of Rulemaking Docket Opening: 20 A.A.R. 926, April 18, 2014 (*in this issue*).
- 4. The agency's contact person who can answer questions about the rulemaking:**
Name: Candace Olson, Rules Analyst
Address: Government Relations and Policy Development Office
Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007
Telephone: (602) 712-4534
Fax: (602) 712-3232
E-mail: COlson2@azdot.gov
Web site: <http://www.azdot.gov/about/GovernmentRelations>
- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
The Arizona Department of Transportation (ADOT), in partnership with the Arizona Department of Public Safety (DPS), engages in this rulemaking to incorporate sections of the 2012 edition of the *Code of Federal Regulations*. The United States Department of Transportation (USDOT) requires that states adopt Federal Motor Carrier Safety

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and Hazardous Materials Regulations to ensure eligibility for federal enforcement grants. Both ADOT and DPS rely on these federal monies to fund numerous enforcement positions, especially at Arizona's southern ports of entry.

ADOT amended R17-5-203 to require motor carriers conducting intrastate commerce in a commercial motor vehicle, except intrastate farm vehicles, to file a Motor Carrier Identification Report, which will require the intrastate motor carriers to obtain a USDOT number from the Federal Motor Carrier Safety Administration (FMCSA) registry. This amendment is made in an effort to facilitate tracking and identification of those commercial motor vehicles with a poor safety rating.

ADOT created a new section to establish amendments to 49 CFR 383, including the early adoption of amendments from 78 FR 17875 - 17882, March 25, 2013, in an effort to harmonize federal regulations with Arizona's current statutes and ADOT's Commercial Driver License (CDL) program.

ADOT added an exception for intrastate drivers who are disqualified from driving a commercial motor vehicle as prescribed in 49 CFR 391.41(b)(3), but who are otherwise qualified, to apply for the Intrastate Medical Waiver in an effort to provide the same opportunity as given by FMCSA to interstate drivers.

Changes are also made to ensure conformity to Arizona Administrative Procedure Act, the Secretary of State, and the Governor's Regulatory Review Council rulemaking format and style requirements.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

ADOT did not review or rely on any study relevant to the rules.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

DPS administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona under these rules. The primary cost bearers in relation to these rules are DPS, ADOT, counties, municipal law enforcement agencies electing to enforce the provisions locally, and privately contracted consultant trainers of law enforcement personnel.

DPS incurs substantial costs (more than \$10,000) annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. Business entities bear minimal to moderate costs (under \$10,000) in possible federal registration fees, inspection fees, insurance, and equipment maintenance to remain in compliance with the rules. However, these costs arise from the federal law rather than from this rulemaking. Minimal administrative costs are borne by independent consultant trainers who educate law enforcement and business entities on rule compliance.

ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28 and these rules. ADOT does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the Federal Motor Carrier Safety and Hazardous Materials Regulations that the agency currently has in place. ADOT may experience a minimal increase in revenue from the issuance of CDLs to insulin-dependent diabetic applicants who are now eligible for the Intrastate Medical Waiver. Administrative costs for ADOT should be minimal.

FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous materials programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs.

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to motor carrier and hazmat provision enforcement or incorporate motor carrier/hazmat enforcement together with other duties. Accordingly, local law enforcement electing to engage in motor carrier and hazmat provision enforcement could stand to benefit substantially in cost defrayal through receipt of MCSAP fund allocation by application to DPS, the primary recipient of the MCSAP federal grant monies.

To maintain compliance with the provisions of these rules, motor carriers will likely incur moderate costs in the form of equipment, maintenance, insurance, and inspection fees. However, costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking. If a motor carrier is found to be non-compliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from \$1,000 to \$25,000 per citation and the possible loss of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement.

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9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Candace Olson, Rules Analyst
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Department of Transportation
206 S. 17th Ave., Mail Drop 140A
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Web site: <http://www.azdot.gov/about/GovernmentRelations>

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Written comments on the proposed rulemaking should be directed to the person listed in item 4. All comments must be received by the close of public record at 5:00 p.m. on May 22, 2014. ADOT has scheduled the following oral proceeding for public comments:

Date: May 22, 2014
Time: 10:00 a.m.
Location: 206 S. 17th Ave., Rm. 107
Phoenix, AZ 85007
Nature: Oral Proceeding/Public Hearing

Pursuant to Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act (ADA), ADOT does not discriminate on the basis of race, color, national origin, age, gender or disability. Persons that require a reasonable accommodation based on language or disability should contact ADOT Civil Rights at (602) 712-7761 or civilrightsoffice@azdot.gov (or designated coordinator). Requests should be made as early as possible to ensure the state has an opportunity to address the accommodation.

Personas que requieren asistencia o una adaptación razonable por habilidad limitada en inglés o discapacidad deben ponerse en contacto con la Oficina de Derechos Civiles de ADOT al (602) 712-7761 or civilrightsoffice@azdot.gov (or designated coordinator). Las solicitudes deben hacerse tan pronto como sea posible para asegurar que el estado tiene la oportunidad de abordar el alojamiento.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

There are no other matters prescribed by statute applicable to ADOT or to any specific rule or class of rules.

a. Whether the rules require a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

These rules provide for the issuance of an Intrastate Medical Waiver, and in keeping with state statute, require applicable drivers to have a Commercial Learner's Permit (CLP) or CDL and endorsements. These are general permits since the activities and practices authorized by them are substantially similar in nature for all holders.

b. Whether a federal law is applicable to the subject of the rules, whether the rules are more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal regulations in 49 CFR 40, 107, 171, 172, 173, 177, 178, 180, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399 are applicable to the rules. R17-5-205(E)(2) is amending 49 CFR 383.153(e) by removing the exception for a non-domiciled CLP or CDL holder who is domiciled in a foreign jurisdiction for providing the holder's social security number (SSN) on the application. Pursuant to Laws 2013, Chapter 128, the exemption for the SSN of nonresident CDL applicants was removed from A.R.S. § 28-3158, which also reclassified nonresident CDL as non-domiciled CDL. This change authorizes ADOT to require all CLP and CDL holders to provide their SSNs. This amendment is consistent with other federal laws (42 U.S.C. 405 and 42 U.S.C. 666) that require states to obtain SSNs and the statutory requirement of A.R.S. § 28-3158.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted to ADOT.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

In R17-5-202: 49 CFR 40, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2012

In R17-5-209: 49 CFR 107, 171, 172, 173, 177, 178, and 180, revised as of October 1, 2012

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS**

ARTICLE 2. MOTOR CARRIERS

Section

- R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability
R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General
R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties
R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision; ~~Federal Diabetes Exemption Program~~
R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability
R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

ARTICLE 2. MOTOR CARRIERS

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

- A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, ~~2009~~ 2012, and no later amendments or editions, as amended under this Article. The incorporated material is on file with the Department and is available from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>.
- B. The sections of 49 CFR incorporated under subsection (A) apply as amended under this Article to all intrastate and interstate motor carriers operating in Arizona and persons operating a commercial motor vehicle, except as provided under subsection (C).
- C. The intrastate operator of a tow truck with a gross vehicle weight rating of 26,000 pounds or less is exempt from the requirements of 49 CFR 390 through 399, except that the driver is subject to the physical qualifications and examination requirements of 49 CFR 391, subpart E.

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

- A. 49 CFR 390.3, General applicability, is amended as follows:
Paragraph (a) is amended to read:
Regulations incorporated in this section are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be placarded as prescribed under R17-5-209.
- B. 49 CFR 390.5, Definitions. The definitions listed under 49 CFR 390.5 are amended as follows:
"Commercial Motor Vehicle" or "CMV" has the same meaning as prescribed under A.R.S. § 28-5201.
"Special agent" means an officer or agent of the Department, the Department of Public Safety, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona's Motor Carrier Safety requirements.
"State" means a state of the United States or the District of Columbia.
"Tow truck," as used in the definition of emergency under 49 CFR 390.5, has the same meaning as prescribed under A.A.C. R13-3-701.
- C. 49 CFR 390.19, Motor carrier, hazardous material shipper, and intermodal equipment provider identification reports. Paragraph (a)(1) is amended to read:
A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce or in intrastate commerce in a CMV, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must file a Motor Carrier Identification Report, Form MCS-150.

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~~C.D.~~ 49 CFR 390.23, Relief from regulations.

1. Paragraph (a)(2), Local emergencies, is amended by adding:
When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.
2. Paragraph (a)(2)(i)(A) is amended to read:
An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or

~~D.E.~~ 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended by adding:

A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

- A. 49 CFR 391.11, General qualifications of drivers. Paragraph (b)(1) is amended to read:
Is at least 21 years of age for interstate operation; or is at least 18 years of age for operations restricted to intrastate transportation not involving the transportation of a reportable quantity of hazardous substance, hazardous waste required to be manifested, or hazardous material in an amount requiring a vehicle to be placarded as prescribed under R17-5-209-;
- B. 49 CFR 391.51, General requirements for driver qualification files. Paragraph (b)(8) is amended ~~by adding to read:~~
"A Skill Performance Evaluation Certificate obtained from a Field Administrator, Division Administrator, or state Director issued in accordance with § 391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter; or a copy of the Arizona intrastate medical waiver, if a waiver is granted by the Director as prescribed under R17-5-208-;" and

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

- A. 49 CFR 383.5, Definitions. The definitions listed under 49 CFR 383.5 are amended as follows:
"Commercial motor vehicle" or "CMV" has the same meaning as prescribed under A.R.S. § 28-3001.
"Conviction" has the same meaning as prescribed under A.R.S. § 28-3001.
"Disqualification" has the same meaning as prescribed under A.R.S. § 28-3001.
"Motor vehicle" has the same meaning as prescribed under A.R.S. § 28-101.
"Out-of-service order" has the same meaning as prescribed under A.R.S. § 28-5241.
"School bus" has the same meaning as prescribed under A.R.S. § 28-101.
"Tank vehicle" has the same meaning as prescribed under A.R.S. § 28-3103.
- B. 49 CFR 383.71, Driver application and certification procedures. Paragraphs (b)(1)(ii), Excepted interstate, and (b)(1)(iv), Excepted intrastate, are deleted.
- C. 49 CFR 383.73, State procedures.
 1. Paragraph (a)(2)(vi) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(a)(2)(v) and proof of state of domicile specified in § 383.71(a)(2)(vi). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
 2. Paragraph (b)(6) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
 3. Paragraph (c)(4) is amended to read:
If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has successfully completed a new test for such endorsement specified in § 383.121.
 4. Paragraphs (c)(4)(i) and (c)(4)(ii) are deleted.

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5. Paragraph (c)(7) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
6. Paragraph (d)(7) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done; and
7. Paragraph (e)(5) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade, or transfer of a CDL or non-domiciled CDL, for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
8. Paragraph (f)(2)(ii) is amended to read:
The state must add the word "non-domiciled" to the face of the CLP or CDL, in accordance with § 383.153(c); and
9. Paragraph (m), Document verification, is amended to read:
The state must require at least two persons within the driver licensing agency to participate substantively in the processing and verification of the documents involved in the licensing process for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL. The documents being processed and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores. This section does not require two people to process or verify each document involved in the licensing process. Exception: For offices with only one staff member, at least some of the documents must be processed or verified by a supervisor before issuance or, when a supervisor is not available, copies must be made of some of the documents involved in the licensing process and a supervisor must verify them within one business day of issuance of the CLP, non-domiciled CLP, CDL or non-domiciled CDL.
- D.** 49 CFR 383.75, Third party testing.
 1. Paragraph (a)(7) is amended to read:
A skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner; and
 2. Paragraph (a)(8)(v) is amended to read:
Require the third party tester to initiate and maintain a bond in an amount pursuant to A.R.S. Title 28, Chapter 13 to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond.
- E.** 49 CFR 383.153, Information on the CLP and CDL documents and applications.
 1. Paragraph (b)(1) is amended to read:
A CLP may, but is not required to, contain a digital color image or photograph or black and white laser engraved photograph.
 2. Paragraph (e) is amended to read:
Before a CLP or CDL may be issued:
 - (1) A driver applicant must provide the driver applicant's Social Security Number on the application of a CLP or CDL.
 - (2) The state must provide the Social Security Number to the CDLIS.
 - (3) The state must not display the Social Security Number on the CLP or CDL.
 3. Paragraph (h) is amended to read:
On or after July 8, 2014 current CLP and CDL holders who do not have the standardized endorsement and restriction codes and applicants for a CLP or CDL are to be issued CLPs with the standardized codes upon initial issuance, renewal or upgrade and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.

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R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision; ~~Federal Diabetes Exemption Program~~

- A.** A person who is not physically qualified to drive a commercial motor vehicle in interstate commerce due to loss of limb, limb impairment, an insulin-dependent diabetic condition, or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10), but otherwise meets all other requirements under 49 CFR 391.41, may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director. Application for an intrastate medical waiver shall be submitted according to subsection (B).
- ~~**B.** A person eligible to apply for an intrastate medical waiver under subsection (A) shall:~~
- ~~1. Meet all other requirements under 49 CFR 391.49(e), Alternative Physical Qualification Standards for the Loss or Impairment of Limbs; and~~
 - ~~2. Apply to the Department as prescribed under subsection (C).~~
- ~~**C.**~~ **B.** A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, may complete and submit an intrastate medical waiver application to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, which shall:
1. Identify the applicant:
 - a. Name and complete address of the driver applicant;
 - b. Name and complete address of the motor carrier co-applicant;
 - c. U.S. Department of Transportation motor carrier identification number, if known; and
 - d. A description of the driver applicant's limb or visual impairment or insulin-dependent diabetic condition as applicable to the type of waiver being requested;
 2. Describe the type of operation the driver applicant will be employed to perform, ~~if including~~ the following information ~~is~~ (if known):
 - a. Average period of time the driver will be driving or on duty, per day;
 - b. Type of commodities or cargo to be transported;
 - c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
 - d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;
 3. Describe the commercial motor vehicles the driver applicant intends to drive:
 - a. Truck, truck tractor, or bus make, model, and year (if known);
 - b. Drive train:
 - i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
 - ii. Auxiliary transmission (if any) and number of forward speeds; and
 - iii. Rear axle (designate single speed, two-speed, or three-speed);
 - c. Type of brake system;
 - d. Steering, manual or power assisted;
 - e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
 - f. Number of semitrailers or full trailers to be towed at one time;
 - g. For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
 - h. Description of any modifications made to the commercial motor vehicle for the driver applicant, attach photographs where applicable;
 4. Include a certification statement:
 - ~~a. The co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391; or~~
 - ~~b. a. In the case of a unilateral application, the~~ The driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
 - ~~b. In case of a co-applicant, the co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and~~
 5. ~~Document the~~ Contain signature of applicant(s) and date signed:
 - a. The driver applicant's signature ~~in the case of a unilateral application; or and~~
 - b. The motor carrier official's signature and title if the application has a co-applicant. Depending on the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.
- ~~**D.**~~ **C.** The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) or (2) shall be accompanied by:
1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
 2. ~~A~~ The Department's medical waiver evaluation summary completed by either a ~~board-qualified~~ board-qualified or

~~board-certified~~ board-certified ~~physiatrist or orthopedic surgeon.~~ The co-applicant motor carrier or the driver applicant shall provide the ~~physiatrist or orthopedic surgeon~~ with a description of the job-related tasks the driver applicant will be required to perform:

- a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) shall include:
 - i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and
 - ii. A statement by a ~~board-qualified~~ board-qualified or ~~board-certified~~ board-certified psychiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately ~~when the intrastate medical waiver is requested due to a loss or impairment of limbs;~~
- b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(2) shall include:
 - i. An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
 - ii. An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
 - iii. A statement by a ~~board-qualified~~ board-qualified or ~~board-certified~~ board-certified psychiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
3. A description of the driver applicant's prosthetic or orthotic device worn, if any; and
4. ~~A skill performance evaluation performed by a federally certified state commercial driver license examiner;~~
5. ~~Application for employment:~~
 - a. ~~A copy of the driver applicant's application for employment completed pursuant to 49 CFR 391.21; or~~
 - b. ~~A copy of the unilateral applicant's application for employment from where the unilateral applicant most recently held employment as a commercial motor vehicle driver. If not previously employed as a commercial motor vehicle driver, a statement of explanation to that effect; and~~
- 6.4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.

D. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(3) shall be accompanied by:

1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
2. An evaluation by a board-certified or board-eligible endocrinologist. A complete endocrinologist evaluation shall consist of:
 - a. A comprehensive evaluation of the applicant's five-year medical history and current status. The applicant shall provide the examining endocrinologist with a complete medical history as it pertains to the applicant's diabetes and/or its complications, including, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies, follow-up reports, reports of any hypoglycemic insulin reactions within the 12 months prior to the date of application, and other reports as requested by the endocrinologist. The evaluation shall also include a review of:
 - i. Daily glucose monitoring logs, glycosylated hemoglobin (A1c) indicating a result in the range of 7% and 10%, including lab reference page performed during the last six months unless recently diagnosed;
 - ii. Insulin dosages and types, diet utilized for control, and all medications taken; and
 - iii. Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;
 - b. A statement that the applicant is free from insulin reactions. Insulin reactions include any severe hypoglycemic reaction, which can be a reaction that results in seizure, loss of consciousness, one that requires the assistance of another person, or causes a period of impaired cognitive function that occurs without warning. To be eligible the applicant must not have hypoglycemia unawareness and must have had no more than one documented severe hypoglycemic reaction in the previous 12 months and has had:
 - i. No recurrent (two or more) severe hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years;
 - ii. No recurrent severe hypoglycemic reactions requiring the assistance of another person within the past five years;
 - iii. No recurrent severe hypoglycemic reactions resulting in impaired cognitive functions that occurred without warning symptoms within the past five years; and
 - iv. A period of one year of demonstrated stability following the first period of severe hypoglycemia;
 - c. A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical

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determinations:

- i. The endocrinologist is familiar with the applicant's medical history for the past five years through a records review, treating the patient, or consultation with the treating physician;
- ii. The applicant is able to safely operate a commercial motor vehicle while using insulin; and
- iii. The applicant is educated in diabetes, including the last education date, and its management and is thoroughly informed of and understands how to individually manage and monitor the applicant's diabetes mellitus and has demonstrated the ability and willingness to properly monitor and manage the applicant's diabetes and procedures to follow if complications arise;

- 3. A separate signed vision evaluation from a board-qualified or board-certified ophthalmologist or licensed optometrist indicating that the applicant has been examined and does not have diabetic retinopathy and meets the vision standard of 49 CFR 391.41(b)(10), or has been issued a valid intrastate medical waiver for monocular vision. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by a board-qualified or board-certified ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable proliferative diabetic retinopathy (i.e. unstable advancing disease of blood vessels in the retina); and
- 4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.

E. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:

- 1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
- 2. A current vision examination report, ~~which is~~ completed by a board-qualified or board-certified ophthalmologist or a licensed optometrist; The report shall indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant's dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and amber, as applicable to the type of medical waiver being requested;
 - a. ~~Completes on a form provided by the Department;~~
 - b. ~~Uses to indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant's dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and yellow, as applicable to the type of medical waiver being requested; and~~
 - e. ~~Mails to the Department at the address provided on the form;~~
- 3. ~~A skill performance evaluation administered by a federally certified state commercial driver license examiner at a commercial driver license facility of the Department;~~
- 4. ~~Application for employment:~~
 - a. ~~A copy of the driver applicant's application for employment completed pursuant to 49 CFR 391.21; or~~
 - b. ~~A copy of the unilateral applicant's application for employment from where the unilateral applicant most recently held employment as a commercial motor vehicle driver. If not previously employed as a commercial motor vehicle driver, a statement of explanation to that effect;~~
- 5-3. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained; and
- 6-4. A certification statement by the driver applicant indicating from the employer that the driver applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.

F. Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A), whether the waiver was granted unilaterally to the driver, or to the driver and co-applicant motor carrier, shall agree to:

- 1. Report to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, in writing, any suspension, revocation, disqualification, or withdrawal of the subject driver's driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;
- 2. Provide to the Department's Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, disqualifications, or withdrawals involving the subject driver;
- 3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;
- 4. Evaluate the subject driver for those non-driving safety related job tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the employing motor carrier; and

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5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.
- G.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.
- H.** The Department may require the driver applicant to demonstrate the driver applicant's ability to safely operate the commercial motor vehicle the driver intends to drive.
- I.** If required by the Department during the application process, a driver applicant shall have a skill performance evaluation performed by a federally-certified state commercial driver license examiner at a Department commercial driver license facility when directed.
- ~~**I.J.**~~ ~~After successful completion of a skill performance evaluation, if~~ If the Director grants an intrastate medical waiver under subsection (A) to the driver applicant, the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.
- ~~**J.K.**~~ The intrastate medical waiver granted by the Director under subsection (A) shall identify:
1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and
 2. The trailer type used in the skill performance evaluation, if applicable, without limiting the waiver to that specific trailer type.
- ~~**K.L.**~~ A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:
1. A trailer road test administered by the motor carrier under subsection (F)(3) for each type of trailer, and
 2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection (F)(4).
- ~~**L.M.**~~ The intrastate medical waiver granted by the Director under subsection (A) shall be:
1. Valid for a period of not more than two years from the date of issuance;
 2. Renewable 30 days prior to the expiration date; and
 3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employer or to the subject driver, as a unilateral applicant if becoming self-employed, upon written notification to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, stating the new employer's name and the type of equipment to be driven.
- ~~**M.N.**~~ An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection (E), shall prohibit the subject driver from transporting:
1. Passengers for hire; and
 2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.
- ~~**N.O.**~~ A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver's possession while on duty.
- ~~**O.P.**~~ The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier's file for a period of three years after the driver's employment is terminated.
- O.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for insulin-dependent diabetes under subsection (D), must comply with the following conditions:
1. Maintain appropriate medical supplies for glucose management while preparing for the operation of a commercial motor vehicle and during its operation. The supplies shall include the following:
 - a. A digital glucose monitor with computerized memory.
 - b. Supplies needed to obtain adequate blood samples and to measure blood glucose.
 - c. Insulin to be used as necessary, and
 - d. An amount of rapidly absorbable glucose to be used as necessary;
 2. Maintain a daily record of actual driving time to correlate with the daily glucose measurements;
 3. Monitor and maintain blood glucose levels in the range of 100 to 400 milligrams per deciliter (mg/dl) prior to and while driving.
 - a. Check glucose before starting to drive and take corrective action if necessary. If glucose is less than 100 mg/dl, take glucose or food and recheck in 30 minutes. Repeat the process until glucose is greater than 100 mg/dl. Do not drive if glucose is less than 100 mg/dl;
 - b. While driving, stop the vehicle in a safe location and check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;
 - c. Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and
 - d. If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours after last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl;
 4. Participate in a diabetes education program annually;

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5. Undergo the following evaluations and examinations and submit to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, within 10 days of the date of the evaluation or exam:
 - a. A quarterly evaluation completed by a board-certified or board-eligible endocrinologist. A quarterly endocrinologist evaluation shall include a review of the driver's daily glucose logs and glucose levels (from the subject driver's required monitoring device), a comparison of monitoring dates to the driving log to ensure that the subject driver is checking glucose levels prior to operating a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a glucose level in the range of 100 to 400 mg/dl while driving a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a stable insulin regimen and that the subject driver's quarterly A1c result continues to reflect stable control, reports of any severe hypoglycemic episodes, any hypoglycemic-related hospitalization, and any treatment regimen changes since the last hypoglycemic episode;
 - b. An annual evaluation completed by a board-certified or board-eligible endocrinologist. In addition to the requirements of a quarterly endocrinologist evaluation under subsection (Q)(5)(a), an annual endocrinologist evaluation shall also include a general physical examination, an indication that the driver has continued to participate in a diabetes education program with the last education date provided, a certifying statement indicating that the driver understands how to individually manage and monitor the driver's diabetes mellitus, an indication of the development of, or progression, or both, in diabetes complications (i.e. renal disease, cardiovascular disease, and neurological disease), list of all medications taken and whether any of the medications may compromise the driver's ability to operate a commercial motor vehicle, the endocrinologist's belief that the driver has demonstrated the ability and willingness to properly manage the driver's diabetes, and a certifying statement indicating that the driver is able to safely operate a commercial motor vehicle while using insulin;
 - c. An annual vision examination report, as prescribed under subsection (D)(3). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the driver does not have unstable proliferative diabetic retinopathy; and
 - d. An annual medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43. Provide copies of the endocrinologist evaluation and the ophthalmologist/optometrist examination to the medical examiner for review; and
6. Report the following information to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, within two days of occurrence:
 - a. All episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and
 - b. Any involvement in an accident or any other adverse event in a commercial motor vehicle or personal vehicle, related to an episode of hypoglycemia or hyperglycemia.
- R.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for monocular vision under subsection (E), must be physically examined every year and shall submit the following to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100:
 1. A vision examination report issued within the last 90 days, as prescribed under subsection (E)(2); and
 2. A current and valid medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43.
- ~~**P.S.**~~ A driver applicant subject to an intrastate medical waiver, or a driver applicant subject to an intrastate medical waiver jointly with a motor carrier co-applicant whose principal place of business is located in Arizona, may renew an intrastate medical waiver by submitting to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, ~~an~~ a new intrastate medical waiver renewal application. The intrastate medical waiver renewal application shall contain the following:
 1. Name and complete address of the motor carrier currently employing the applicant;
 2. Name and complete address of the subject driver;
 3. Total miles driven under the current intrastate medical waiver;
 4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
 5. A current medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
 6. A current medical waiver evaluation summary, as prescribed under subsection ~~(D)(2)~~ (C)(2), ~~if an unstable medical condition exists~~ a current endocrinologist evaluation, as prescribed under subsection (D)(2), or a current vision examination report, or both, as prescribed under subsections (D)(3) and (F)(2);
 7. A copy of the subject driver's current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;
 8. Notification of any change in the type of tractor the driver will operate;
 9. Subject driver's signature and date signed; and
 10. Motor carrier co-applicant's signature and date signed (if applicable).
- ~~**Q.**~~ Falsifying information on an intrastate medical waiver application or an intrastate medical waiver renewal application or other information required by this Section of either an applicant or a co-applicant motor carrier is prohibited.

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~~R.T.~~ The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.

~~S.U.~~ The Director may revoke an intrastate medical waiver after providing, ~~to the person to whom it was issued,~~ the driver subject to an intrastate medical waiver written notice of the proposed revocation and a reasonable opportunity to request a hearing, ~~pursuant to the procedure prescribed under 17 A.A.C. 1, Article 5.~~ The Director may revoke an intrastate medical waiver if the:

1. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both provided false information in the application.
2. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both failed to comply with the terms and conditions of the intrastate medical waiver, and/or
3. Issuance of the intrastate medical waiver resulted in a lower level of safety than before the waiver was granted.

~~T.V.~~ If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

A. Incorporation of federal regulations.

1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, ~~2009~~ 2012, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:
 - a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
 - b. Subchapter C - Hazardous Materials Regulations; Parts:
 - i. 171 - General information, regulations, and definitions;
 - ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
 - iii. 173 - Shippers - general requirements for shipments and packagings;
 - iv. 177 - Carriage by public highway;
 - v. 178 - Specifications for packagings; and
 - vi. 180 - Continuing qualification and maintenance of packagings.
2. The material incorporated by reference under this subsection is on file with the Department and is available from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>.

B. Application and exceptions.

1. Application.
 - a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined under A.R.S. § 28-5201.
 - b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
2. Exceptions. An authorized emergency vehicle, as defined under A.R.S. § 28-101, is excepted from the provisions of this Section.

C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:

1. Part 171, ~~General information, regulations, and definitions.~~ Section 171.8, Definitions and abbreviations. Section 171.8 is amended by revising the definitions for “Carrier,” “Hazmat employer,” and “Person,” and adding a definition for “Highway” as follows:

“‘Carrier’ means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material.”

“‘Hazmat employer’ means a person who uses one or more employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined under A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities.”

“‘Highway’ means a public highway defined under A.R.S. § 28-5201.”

“‘Person’ has the same meaning as defined under A.R.S. § 28-5201.”

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2. Part 172₂. Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans. Section 172.3₂. Applicability. Paragraph (a)(2) is amended to read: "Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway."
3. Part 177₂. Carriage by public highway.
 - a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training. In paragraph (a), the phrase "by private, common, or contract carriers by motor vehicle" is amended to read, "by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway."
 - b. Section 177.802, Inspection. Section 177.802 is amended to read: "Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed under A.R.S. §§ 28-5204 and 28-5231."

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

- A. Scope. This Section applies to any transporter subject to:
 1. R17-5-201 through R17-5-209; and
 2. A.R.S. Title 28, Chapter 14.
- B. Audits.
 1. The Department may conduct an audit for cause or without cause.
 2. The Department may enter the premises of any transporter for the purpose of conducting an audit.
 3. The Department may inspect a motor vehicle:
 - a. Within Arizona at:
 - i. A transporter's place of business, or
 - ii. Any other in-state location, or
 - b. Outside Arizona at a transporter's place of business.
 4. A transporter shall make records available for audit:
 - a. During the transporter's normal business hours, and
 - b. In a specific location as follows:
 - i. The transporter's Arizona place of business, or
 - ii. Either an Arizona location designated by the Director or the transporter's out-of-state place of business.
 5. The Department shall charge a transporter in advance for all expenses to be incurred in performance of an out-of-state audit.
- C. Violation notification. Within five days after audit completion, the Department shall notify an audited transporter in writing of all violations. The notification shall specify a deadline date for remedy of all violations.
- D. Obligation to remedy violations₂. After receipt of a violation notification, a transporter shall remedy all violations by the specified date to comply with:
 1. R17-5-201 through R17-5-209; and
 2. A.R.S. Title 28, Chapter 14₂.
- E. Noncompliance: Failure to remedy violations. If the Department determines a transporter ~~did~~ does not remedy a violation by the date specified in a violation notice, the Department shall initiate further enforcement action as prescribed under A.R.S. §§ 28-5237 and 28-5238.
- F. Danger to public safety. If the Director determines a written violation report establishes probable cause of danger to public safety, the Director shall issue an order by 5:00 p.m. the next business day suspending the Arizona registration of the motor vehicle owned or leased by the transporter, or a driver's Arizona driver license or nonresident driving privilege.